



November 16, 1999

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR99-3276

Dear Mr. Dempsey:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 129427.

The City of Garland (the "city") received a request for "[a]ny and all records relating to the arrest, the time in custody, and records for medical attention requested and/or administered to Alex Matin." In response to the request, you submit to this office for review a copy of the information at issue. You state that the "City has released what it believes to be basic, front page type information from the Arrest Report."¹ However, you assert that the remaining information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception and arguments you raise, and have reviewed the information submitted.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

¹As you have noted, basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision Nos. 597 (1991) (basic information in offense report generally may not be withheld under section 552.103), 127 (1976); *see also* Gov't Code § 552.108(c).

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989).

Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

In this instance, you have supplied to this office a claim letter from an attorney who represents an opposing party.² You state that the requested "information may be relevant to issues of liability and damages that may arise in the litigation, and may be used as evidence in any trial that may result." The requestor's letter states that the deceased individual's "untimely death was caused by the negligence of Garland PD as well as Dallas County Sheriff's office." Based on your arguments and the submitted records, we conclude that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). We also conclude that the documents submitted by the city are related to the litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103(a).

² Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney, and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).³

Finally, we note that some of the responsive information may be subject to access provisions outside of the Public Information Act. *See* Open Records Decision No. 598 at 1 (1991) (Public Information Act exceptions are not applicable to medical records). Although we did not observe medical records within the submitted documents, we note that access to any responsive medical records is governed by the Medical Practice Act (the “MPA”), article 4495b of Vernon’s Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient’s behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

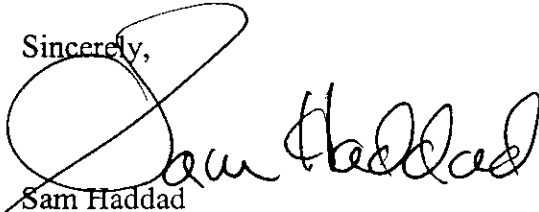
Section 5.08(j)(1) provides for release of medical records upon the patient’s written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Medical records are confidential with access provided only as outlined under the MPA. Open Records Decision No. 598 (1991).

³We note that some of the information in the submitted documents may also be confidential by law. Therefore, once litigation has concluded should there be a subsequent request for this information, we advise the city to exercise caution and seek a ruling from this office concerning the records. *See* Gov’t Code §§ 552.352, 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a circular stamp. The stamp is partially obscured by the signature and the word "Sincerely," above it.

Sam Haddad
Assistant Attorney General
Open Records Division

SH\nc

Ref: ID# 129427

Encl: Submitted documents

cc: Mr. Michael Payma
Payma & McCorkel, P.C.
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(w/o enclosures)